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No. 85-682

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1985

GERALD D. BAIR,
Petitioner,

VS.

TRAILER TRAIN CO., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

AMICUS BRIEF OF THE STATE OF CALIFORNIA, STATE BOARD OF EQUALIZATION IN SUPPORT OF PETITIONER GERALD D. BAIR, DIRECTOR OF THE DEPARTMENT OF REVENUE OF IOWA

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INTEREST OF AMICUS CURIAE

The State of California on behalf of the California State Board of Equalization submits this brief pursuant to Rule 36 as amicus curiae on behalf of petitioner the Iowa Department of Revenue. Rule 36.4 provides that California is not required to obtain the consent of the parties to file the brief.

The California State Board of Equalization is a defendant in a number of actions now pending in which plaintiffs—all the major railroads and car companies operating in California, including

respondents Trailer Train Co., et al. in this petition[1]—allege claims for relief under section 306 of the 4-R Act.[2] *Southern Pacific Transportation Co., et al. v. Board of Equalization, et al.* (N.D. Ca. No. C 81 4365 SW). All the plaintiffs have obtained property tax equalization relief under section 306(1)(a), but the District Court has dismissed the claims of the car company plaintiffs for relief under section 306(1)(d) on the ground that car companies are not common carriers within the meaning of the statute. *Trailer Train Co. v. State Board of Equalization* (N.D. Ca. 1982) 538 F.S. 509, 513. This 1982 ruling of the District Court for the Northern District of California is in direct conflict with the ruling of the Eighth Circuit below.

The California State Board also is concerned about the implications of the Eighth Circuit's ruling that section 306(1)(d) applies to state taxes other than the property tax. Although California does not have an excise tax similar to the Iowa excise tax that is the subject of this litigation, the decision below points the way to federal court review over any California tax which has an indirect impact on a railroad, even though California law affords taxpayers a speedy and adequate remedy in the state courts.

SUMMARY OF ARGUMENT

This Court should issue a writ of certiorari to the Eighth Circuit for the following reasons:[3]

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[1] Respondents and other car companies own railroad cars which typically are leased to railroads.

[2] The Railroad Revitilization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31, 54. Section 306 is codified at 49 U.S.C. § 11503. The language of section 306 as originally enacted governs issues of statutory construction. *Ogilvie v. State Board of Equalization of North Dakota* (8th Cir. 1981) 657 F.2d 204, 206 n. 1, cert. den. (1981) 454 U.S. 1086.

[3] The California State Board also supports the persuasive arguments made by petitoner Gerald D. Bair, Director of the Iowa Department of Revenue and the other amici in their briefs.

1. In holding that section 306(1)(d) applies to a state excise tax, the Eighth Circuit ignored legislative history which shows that Congress intended only to equalize the property tax burden on the railroad industry by prohibiting the assessment or taxation of rail transportation property at discriminatory high percentages of market value. The first three subsections of section 306 clearly were drafted to provide that specific remedy, and subsection (1)(d) should be understood as a catch-all intended to bar other types of property tax discrimination. The Eighth Circuit's overly broad interpretation of subsection (1)(d) as applying to all types of state taxes, both property and non-property, makes the remainder of section 306 superfluous.

While Congress concluded that a federal remedy was necessary because the property tax discrimination was embedded in state law, there was no finding that the railroad industry suffered from non-property tax discrimination. Congress furthermore was aware of the long-standing tradition, manifested in the Anti-Injunction Act (28 U.S.C. § 1341) and the doctrine of such cases as *Moses Lakes Homes v. Grant County* (1961) 365 U.S. 744, against federal intrusion into the internal tax affairs of the states. Unless reversed, the holding below will lead inevitably to the precise breach in federal state-comity which Congress feared, since in the usual case the entire tax structure and tax policies of a state will have to be reviewed to determine whether a given tax is discriminatory.

2. The Eighth Circuit also erred in holding that private car companies are entitled to relief under subsection (1)(d). Given the references to "transportation property" in the remainder of section 306, the reference in subsection (1)(d) to "common carrier[s]" can only be interpreted as an intent to limit relief to a smaller class of plaintiffs. The Eighth Circuit's ruling creates a precedent that the federal courts may enjoin any state tax, even a non-property tax, as to any taxpayer, which has only an indirect burden on the railroad industry, despite the absence of any evidence that Congress intended such a drastic departure from established tradition. This Court should instead approve the contrary reasoning of *Trailer Train Co. v. State Board of Equalization, supra,* holding that, if Congress had intended to give

subsection (1)(d) protection to taxpayers other than common carriers, it could have done so by using the broad language contained elsewhere in section 306.

ARGUMENT

I

SECTION 306 (1)(d) ONLY APPLIES TO PROPERTY TAXES

While at first impression the language of section 306 may seem awkward and cumbersome, once the legislative history [4] has been considered it becomes apparent that the language is instead precisely tailored to deal with the specific problem Congress was asked to redress.

That problem was the so-called classification systems in many states which placed different types of property into different classifications, each classification being assessed or taxed at a different rate, with rail transportation property typically being placed in the highest classification. The Senate Committee on Commerce described the problem as follows:

> "Discrimination can arise in two ways: First, transportation property may be assessed at a higher proportion of its true market value than comparable non-transportation property is assessed, and second, transportation property may be burdened with a higher tax rate than is applied to comparable non-transportation property." (*Discriminatory State Taxation of Interstate Carriers,* S. Report 92-1085, 92d. Cong. 2d. Sess., p. 5.)
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> . . .
>
> "For example, a state may assess railroad property for tax purposes at 100% of value, and other property at only 40% of such value; and a state may subject railroad property at a rate

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[4] The history of the earlier proposals which evolved into § 306 may be considered in interpreting § 306. *Trailer Train Co. v. State Board of Equalization* (9th Cir. 1983) 697 F.2d 860, cert. den. (1983) 464 U.S. 846.

> of $1 per $1,000 of assessed valuation, and other property subject to the same tax purpose at the rate of $0.50 per $1000 of assessed valuation." (*Discriminatory State Taxation of Interstate Carriers,* S. Report 1483, 90th Cong. 2d Sess., p. 3.) [5]

Since the classification systems were embedded in state law, the state courts were powerless to end the discrimination.

At no time in the fifteen years of deliberations which led the enactment of section 306 did Congress ever conclude, or even consider the possibility, that the railroad industry was burdened by discriminatory non-property taxes. Yet the Eighth Circuit ignored this legislative hisstory and instead reached a result which obviously goes far beyond what Congress had in mind.

Nor did the Eighth Circuit correctly understand the relationship between subsection (1)(d) and the remainder of section 306. It is undisputed that subsections (1)(a), (1)(b) and (1)(c) refer to property tax discrimination. If subsection (1)(d) applies to any and all state taxes, both property and non-property, then the first three subsections are redundant surplusage. As one District Court has cleverly observed, the only way in which the various parts of section 306 may each be given an independent meaning is to recognize that there is less to subsection (1)(d) "than meets the eye." *Richmond, Fredericksburg Pot. R. v. Department of Tax* (E.D. Va. 1984) 591 F.Supp. 209, 223, aff'd on other grounds 762 F.2d 375.

Subsection (1)(d) was added without comment only three weeks before section 306's enactment. The decision below rests on the assumption that Congress intended, without discussion or warning, the few words of the addition to be a complete enlargement of the scope and purpose of the proposed legislation which had been under deliberation for fifteen years. With the utmost respect for the Eighth Circuit, it makes more sense to view subsection (1)(d) as a catch-all for discriminatory property taxes

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[5] See also *National Transportation Policy,* S. Report 445, 87th Cong., 1st Sess., p. 486; *Discriminatory Taxation of Common Carriers, Hearings On S. 927 Before The Subcomm. On Surface Transportation of the Comm. on Commerce,* 90th Cong., 1st Sess., p. 54.)

which escape the net of the first three subsections. Thus understood, subsection (1)(d) will play its part in the remedy Congress intended and no more.

A narrow interpretation of subsection (1)(d) would also pay heed to Congress' concern that the federal courts not unduly intrude into the internal tax affairs of the states.[6] This case is an unusual one in that the courts below did not have to decide whether Iowa's excise tax is discriminatory, Iowa having conceded that issue. In the usual case there will be no such concession, and the federal court therefore will have to decide for itself whether the state tax under attack should be enjoined. For example, the situation is sure to arise in which a railroad complains of a tax which is not imposed on other transportation industries, and the state defends by showing that the other industries are subject to a tax which does not apply to the railroad. A comparison of the relative economic impact of the two taxes will therefore be required, which can only lead the federal court into a thicket of analytical problems without any guidance from Congress on what route to follow.[7]

Moreover, the tax burden which a state imposes on the various industries within its jurisdiction may often reflect, and legitimately so, the state's perception of the different economic circumstances of those industries. While Congress has mandated the equal distribution of the property tax burden among all commercial and industrial taxpayers, nothing suggests that Congress further intended the federal courts to sit in judgment on how a state chooses to obtain revenue from non-property taxes while at the same time promoting the overall economic health of its residents.

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[6] See remarks of Senator Lausche, S. Rep. 1483, *supra,* p. 26. See also the references to *Moses Lake Homes v. Grant County* (1961) 365 744 at S. Rep. 1483, *supra,* 11-12; S. Rep. 91-630, *supra,* p. 12. In *Moses Lakes* this Court held that the federal courts may not assess or levy state taxes.

[7] See *Alabama Great Southern R. Co. v. Eagerton* (11th Cir. 1981) 663 F.2d 1036, 1041, in which the Eleventh Circuit directed the District Court to perform such an analysis.

If this case is not properly brought under section 306, this case would be barred by the Anti-Injunction Act, 28 U.S.C. section 1341, depriving the district courts of jurisdiction to enjoin the collection of "any tax under state law" As this Court has recognized, the Act "has its roots in equity practice, in principles of federalism and in recognition of the operative need of a state to administer its own financial operations." *Tully v. Griffin Inc.* 429 U.S. 68, 73 (1976). The Act "reflect[s] the fundamental principle of comity between federal courts and state governments that is essential to our federalism" *Fair Assessment in Real Estate Association v. McNary* (1981) 454 U.S. 100, 103.

Although section 306 of course contains an exemption from the Act, there is no evidence that Congress intended the exemption to be a broad one. See *United Gas Pipeline Company v. Whitman* (6th Cir. 1979) 595 F.2d 323, 330, holding that exceptions to the Act are not recognized unless clearly expressed by Congress. A recognition of the policies which lie behind the Act therefore provides additional support for a narrow interpretation of subsection (1)(d).

II

RELIEF UNDER SECTION 306(1)(d) IS LIMITED TO COMMON CARRIERS

The Eighth Circuit compounded its error by holding that car companies are entitled to subsection (1)(d) relief even though they admittedly are not "common carrier[s]" within the meaning of the statute. The Eighth Circuit's rationale, which is that subsection (1)(d) prohibits any tax which indirectly "results" in a discriminatory burden on a railroad, would allow a steel mill to come to the federal courts for relief. A more reasonable interpretation is that subsection (1)(d) relief is limited to taxpayers which are common carriers as defined by 49 U.S.C. section 10102(4). The term is obviously one of art and, given the reference to "transportation property", a broader term, in the remainder of section 306, its use must have been intended to narrow the coverage of subsection (1)(d). As the District Court observed in the California 4-R Act litigation:

> "If Congress has intended to protect the entire operating unit of common carriers it could have done so by removing the restrictive language in this subsection. In fact, it is more probable that the limitation was included to prevent the application of such a general, catch-all provision to any situation other than one involving the common carrier directly." *Trailer Train, supra,* at 513.

Nor is the gloss put on subsection (1)(d) supported by policy considerations, since nothing in the legislative history suggests that the suppliers of goods and services to the nation's railroads are being taxed excessively. The discussion above of the strong tradition against federal interference with the internal tax affairs of the states is equally applicable here.

Even if subsection (1)(d) is interpreted as applying to non-property taxes, this Court should still hold that only railroads may obtain relief under subsection (1)(d). Such an interpretation would be supported on the basis that Congress intended to balance the increased scope of the taxes prohibited by subsection (1)(d) (in comparison with the scope of the rest of section 306) by limiting the class of plaintiffs who are entitled to its benefits, and the interpretation would avoid at least some of the untoward consequences of the decision below.

CONCLUSION

For the reasons set forth above, this Court should issue a writ of certiorari to the Eighth Circuit.

Respectfully submitted,

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